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EXAMINER

PRUNNER, KATHLEEN J

ART UNIT

PAPER NUMBER

3751

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

②

Office Action Summary	Application No. 10/628,097	Applicant(s) LIBERATORE, RAYMOND A.	
	Examiner Kathleen J. Prunner	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,9-18,20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,9-18,20 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 May 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>082905</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The replacement drawings were received on May 6, 2005. These drawings are disapproved as stated on the attached form PTO-948, "Notice of Draftspersons Patent Drawing Review". The annotated drawings that were submitted on the same date did not clearly show the changes that were being made to the drawings; hence, it is not known what changes are being made to the drawings.
2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) **mentioned** in the description: (A) 21 (note line 23 on page 6); and (B) 17a (note lines 20-21 on page 10). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.
3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "34" has been used to designate both a spreader flap or blade (note Fig. 5 and lines 8-9 on page 7) and a nozzle entrance (note Fig. 8 and line 15 on page 7). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any

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required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “112a” has been used to designate both a bore (note Fig. 19 and line 4 on page 9) and a nozzle outlet (note Fig. 19 and lines 11 and 15 on page 9). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) **not mentioned** in the description: **32a** (note Fig. 5) and **61b** (note Fig. 15). Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

6. The drawings are objected to because: the lead line for “189” in Fig. 6 fails to correspond with the description of 189 in the sentence beginning on line 11 of page 7. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to

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avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

7. The drawings are objected to under 37 CFR 1.84(h)(5) because Figure 18 show(s) modified forms of construction in the same view. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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8. In addition to Replacement Sheets containing the corrected drawing figure(s), applicant is required to submit a marked-up copy of each Replacement Sheet including annotations indicating the changes made to the previous version. The marked-up copy must be clearly labeled as "Annotated Marked-up Drawings" and must be presented in the amendment or remarks section that explains the change(s) to the drawings. See 37 CFR 1.121(d). Failure to timely submit the proposed drawing and marked-up copy will result in the abandonment of the application.

Specification

9. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract **should be in narrative form** and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. **The form and legal phraseology often used in patent claims**, such as "means" and "said", **should be avoided**. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns", "The disclosure-defined by this invention", "The disclosure describes", etc.

10. The abstract of the disclosure remains objected to because: **(A)** it is not in narrative form; and **(B)** it uses the form used in patent claims, i.e., a single sentence. Correction is required. See MPEP § 608.01(b).

11. The following informalities in the specification are noted: **(A)** on page 9, lines 10, 14 and 24, --tip-- should be inserted before "110a"; **(B)** on page 10, lines 1 and 2, --tip-- should be inserted before "110a"; and **(C)** on page 10, line 12, --tip-- should be inserted after "terminal". Appropriate correction is required.

12. The following informalities in the specification are noted: **(A)** in claims 2-6, 9-17, 20 and 21, on line 1, "The combination" should be changed to read --The apparatus--; and **(B)** in

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claim 18, on line 1, "the combination" should be changed to read --the apparatus--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

13. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

14. Claims 1-6, 9-18, 20 and 21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1 now calls for "a nozzle integrally attached to a fitting, the nozzle having an elongated opening and the fitting having a threaded inner surface for engaging a threaded outer surface of the dispenser". However, the originally filed disclosure merely describes and supports "the nozzle outlet 22, which has lateral width 22a substantially greater than its thickness 22b" (note lines 1-2 on page 7) and "The nozzle has a fitting 43 that threadably attaches to dispenser threads 44" (note lines 22-24 on page 7). Claim 1 also now calls for "a cap secured by snap-ring retention to entirely cover the nozzle". However, the originally filed disclosure merely describes and supports "Fig. 6 shows a cap 190 that receives the nozzle with snap-ring retention at 188 in a cap recess 188a of nozzle end 32a" (note lines 9-11 on page 7). Therefore, claims 1-6, 9-18, 20 and 21 are directed to new matter.

15. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

16. Claims 1-6, 9-18, 20 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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17. In regard to claims 1, 2, 5 and 18, the “dispenser” is inferentially included as part of the claimed combination of elements rendering the claims indefinite as to whether the combination of a dispenser and a dispensing nozzle/spreader surface or the subcombination of a dispensing nozzle/spreader surface is intended to be claimed. Should applicant intend the “dispenser” to be a positive element of the claimed combination, then positive structural antecedent basis should be provided therefore. If not, the terminology “adapted to be” could be used.

18. Claim 1 calls for a cap to be secured. However, it is unclear as to what the cap is being secured to.

19. Claim 2 contains a term lacking proper antecedent basis. The claim recites the limitation “the nozzle exit” on line 5. There is insufficient antecedent basis for this limitation in the claim.

20. In claim 2, it is unclear how the nozzle exit structurally relates to the elongated opening now recited in claim 1. It is also unclear as to how the cap of claim 2 relates to that of claim 1.

21. Claims 4, 9, 10, 12, 15 and 16 contain a term lacking proper antecedent basis. The claims recite the limitation “the spreader” on line 1. There is insufficient antecedent basis for this limitation in the claims.

22. Claims 4, 11 and 20 call for a nozzle outlet. However, it is unclear as to how this nozzle outlet is related to the elongated opening recited in claim 1.

23. Claim 5 contains a term lacking proper antecedent basis. The claim recites the limitation “the spreader” on line 2. There is insufficient antecedent basis for this limitation in the claim.

24. Claim 9 contains a term lacking proper antecedent basis. The claim recites the limitation “the dispensed and layered material” on line 2. There is insufficient antecedent basis for this limitation in the claim.

25. Claim 11 contains a term lacking proper antecedent basis. The claim recites the limitation “the nozzle outlet” on line 2. There is insufficient antecedent basis for this limitation in the claim.

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26. Claim 13 contains terms lacking proper antecedent basis. The claim recites the limitations “the spreader flap” and “the nozzle exit” on line 2. There is insufficient antecedent basis for these limitations in the claim.

27. Claim 16 contains terms lacking proper antecedent basis. The claim recites the limitations “the spreader terminal” on line 2 and “the level of that material” on line 3. There is insufficient antecedent basis for these limitations in the claim.

28. Claim 17 contains a term lacking proper antecedent basis. The claim recites the limitation “the spreader” on lines 1 and 2. There is insufficient antecedent basis for this limitation in the claim.

29. Claim 18 contains a term lacking proper antecedent basis. The claim recites the limitation “the dispensed material” on lines 3 and 4. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

30. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

31. Claims 1-5, 9, 10, 13, 14, 18, 20 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Poole et al. Poole et al. discloses an apparatus for use with a dispenser 30 (note Fig. 1) having all the claimed features including a nozzle (constituted by dispensing element 32, note Fig. 1) integrally attached to a fitting (constituted by base 60, note Fig. 8), the nozzle 32 having an elongated opening 73 and the fitting 60 having a threaded inner surface 76 (note Fig. 7) for engaging a threaded outer surface 77 of a dispenser 30 (note lines 32-38 in col. 5), a spreader surface (constituted by the carriage 34, note lines 43-53 in col. 5) associated with the nozzle 32 whereby the dispenser 30 may be manipulated to cause the spreader surface 34 to spread edible material (note lines 57-61 in col. 4) dispensed via the nozzle 32 (note lines 52-65 in

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col. 6), and a cap or lid portion 130 (note Figs. 18 and 19) to entirely cover the nozzle 32 (note lines 37-39 in col. 3) which may be flexibly coupled to the body by a snap fit upon the body to seal it when not in use (note lines 25-28 in col. 2). With respect to claim 2, Poole et al. also disclose that the spreader surface 34 has the form of a blade or spatula surface (note Figs. 1 and 2) on a cap attached to the dispenser (Fig. 1), attached to the dispenser (Fig. 1), and located proximate the nozzle exit or opening (note Fig. 1). With respect to claim 3, Poole et al. further disclose that the spreader surface 34 is characterized by being used proximate the nozzle 32 (note Fig. 10), at the nozzle 32 (note Fig. 10), and carried by the nozzle 32 (note Fig. 10). With regard to claim 4, Poole et al. also disclose that the spreader surface 34 has the form of a blade (note Fig. 2), located at a nozzle outlet or opening from which the edible material is dispensed, the blade being substantially stiff during use (note Fig. 1). With regard to claim 5, Poole et al. further disclose that the dispenser 30 carries the nozzle 32 (note Fig. 2) and that the dispenser 30 contains edible material (note lines 57-61 in col. 4). With respect to claims 9 and 10, Poole et al. additionally disclose that the spreader surface 34 has a serrated edge 81 (note lines 49-51 in col. 5) to engage the dispensed and layered material. With respect to claim 10, the serrated edge 81 of the spreader surface 34 of Poole et al. would inherently produce a striated surface configuration on the dispensed material especially if the material is of a viscous nature. With respect to claim 13, Poole et al. also disclose an adjuster on the nozzle 32 to adjust the positioning of the spreader surface 34 relative to the nozzle 32 (note Fig. 15 and from line 66 in col. 6 to line 5 in col.7). With respect to claim 14, Poole et al. further disclose that the adjuster has a protrusion (formed by the bottom of the recessed portion 120, note Fig. 15) that is finger engageable on the side of the nozzle (note Fig. 15 and from line 66 in col. 6 to line 5 in col.7). With regard to claim 18, Poole et al. also disclose the method of use of the apparatus characterized by spreading the dispensed material (note Figs. 1 and 11, note lines 40-42 in col. 4 and lines 60-62 in col. 2). With regard to claim 20, Poole et al. further disclose that the cap or lid portion 130 has an interior configuration to conform to the nozzle 32 and its opening 73 as well as to the spreader surface 34 (note Fig. 19). With respect to claim 21, Poole et al. additionally

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discloses that the spreader surface 34 has a curvature to conform to an edible surface (note Figs. 1 and 11 and lines 57-61 in col. 4).

Claim Rejections - 35 USC § 103

32. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

33. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

34. Claims 1-6, 9-12, 15-18, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lobdell in view of Poole et al. Lobdell discloses an apparatus for use with a dispenser 26 (note Fig. 6) having the claimed features including a nozzle (constituted by channel 19) integrally attached to a fitting (constituted by base extremity 12), the nozzle 19 having an elongated opening 20 and the fitting 12 having a threaded inner surface 18 for engaging a threaded outer surface 27 of the dispenser 26 (note Fig. 6), a spreader surface (constituted by the blade 16) associated with the nozzle 19 whereby the dispenser 26 may be manipulated to cause the spreader surface 16 to spread edible material dispensed via the nozzle 19 (note lines 26-30 in col. 3), and a cap or removable protective sheath to entirely cover the nozzle (note lines 37-39 in col. 3). Although Lobdell fails to disclose how the cap or removable protective sheath is secured to the apparatus, attention is directed to Poole et al. who disclose another dispenser 30 provided with a spreader surface 34 and having a removable protective cap or lid portion 130

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(note Fig. 19) that is secured to the dispenser 30 by a snap ring retention mechanism (note lines 25-28 in col. 2) in order to seal the closure and be flexibly coupled to the dispensing body. It would have been obvious to one of ordinary skill in the applicator/dispersing art, at the time the invention was made, to secure the cap or removable protective sheath to the apparatus of Lobdell by a snap ring retention mechanism in view of the teachings of Poole et al. in order to seal the closure and be flexibly coupled to the dispensing body. With respect to claim 2, Lobdell also discloses that the spreader surface 16 has the form of a blade 11 or spatula surface (note Figs. 1 and 6) on a cap attached to the dispenser (Fig. 6), attached to the dispenser (Fig. 6), and located proximate the nozzle exit or opening (note Fig. 3). With respect to claim 3, Lobdell further discloses that the spreader surface 16 is characterized by being used proximate the nozzle (note Fig. 3 and lines 28-30 in col. 3), at the nozzle (note Fig. 3), carried by the nozzle (note Fig. 3), and curved (note Figs. 1 and 3). With regard to claim 6, Lobdell additionally discloses that the blade 11, which includes the nozzle 19, is fabricated of plastic (note lines 50-51 in col. 2) and is flexible enough to spread flowable material smoothly and evenly in thin layers over a piece of bread by strokes taken back and forth transversely to a plane of symmetry (note lines 22-31 in col. 3). With regard to claim 4, Lobdell also discloses that the spreader surface 16 has the form of a flap or blade 11 (note Fig. 6), located at a nozzle outlet or opening from which the edible material is dispensed, the flap or blade 11 being fabricated of plastic (note lines 50-51 in col. 2) and is flexible enough to spread flowable material smoothly and evenly in thin layers over a piece of bread by strokes taken back and forth transversely to a plane of symmetry (note lines 22-31 in col. 3). With regard to claim 5, Lobdell further discloses that the dispenser 26 carries the nozzle 19 (note Fig. 6) and that the dispenser 26 contains edible material (note lines 32-33 in col. 3). With respect to claims 9 and 10, Lobdell additionally discloses that the spreader surface 16 has a serrated edge 23 (note Fig. 1) to engage the dispensed and layered material. With respect to claim 10, the serrated edge 23 of the spreader surface 16 of Lobdell would inherently produce a striated surface configuration on the dispensed material especially if the material is of a viscous nature. With respect to claim 11, Lobdell also discloses that the nozzle has an

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elongated serrated edge 23 at the outlet opening (note Fig. 1). With respect to claim 12, Lobdell further discloses that the spreader surface 16 overlies the serrated edge (note Fig. 1). With regard to claim 15, Lobdell additionally discloses that the spreader surface 16 is angled relative to the nozzle so as not to engage the material as it is dispensed through the opening. With regard to claim 16, Lobdell also discloses that the spreader surface 16 is angled relative to the nozzle so that the terminal edge or distal extremity 13 of the spreader surface 16 can engage the material while the nozzle 19 remains spaced above the level of that material. With regard to claim 17, Lobdell further discloses that the spreader surface 16 tapers toward a flexible tip or distal extremity 13 (note Fig. 2) and the spreader surface 16 having a body of sufficient thickness (note Figs. 2, 4 and 5) so as to be manipulable without flexing. With respect to claim 18, Lobdell additionally discloses the method of spreading the dispensed material (note lines 26-30 in col. 3). With respect to claim 20, Poole et al. further teach the obviousness of using a cap or lid portion that has an interior configuration to conform to the nozzle and nozzle outlet or opening and to the spreader surface (note Fig. 19) to completely cover the dispensing device or apparatus. With respect to claim 21, Lobdell also discloses that the spreader surface 16 has a curvature to conform to an edible curved surface (note Figs. 1 and 3).

35. Claims 1-5, 15-18, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pearce in view of Lobdell and Poole et al. Pearce discloses an apparatus or applicator for use with a dispenser or container 10 having the claimed features including a nozzle (constituted by neck 13) integrally attached to a fitting (constituted by end 36), the nozzle 13 having an elongated opening or slot 17 (note Fig. 1 and line 56 in col. 1) and the fitting 36 having a threaded inner surface 14 for engaging a threaded outer surface 12 of the dispenser or container 10 (note Fig. 6), a spreader surface (constituted by the flap 18) associated with the nozzle 13 whereby the dispenser 10 may be manipulated to cause the spreader surface 18 to spread edible material (note lines 21-23 in col. 1) dispensed via the nozzle 13 (note lines 6-22 in col. 2). Although Pearce fails to disclose the use of providing a cap for the apparatus or applicator, attention is directed to Lobdell who discloses another applicator 28 for use with a dispenser or

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container 26 provided with a spreader surface 16 having a removable protective sheath or cap in order to entirely cover the nozzle and facilitate sanitary storage of the dispenser (note lines 37-39 in col. 3). It would have been obvious to one of ordinary skill in the applicator/dispersing art, at the time the invention was made, to provide the apparatus or applicator of Pearce with a cap or removable protective sheath in view of the teachings of Lobdell in order to entirely cover the nozzle and facilitate sanitary storage of the dispenser especially when the material contained therein is not completely depleted. Although Lobdell fails to disclose how the cap or removable protective sheath is secured to the apparatus, attention is directed to Poole et al. who discloses another dispenser 30 provided with a spreader surface 34 and having a removable protective cap or lid portion 130 (note Fig. 19) that is secured to the dispenser 30 by a snap ring retention mechanism (note lines 25-28 in col. 2) in order to seal the closure and be flexibly coupled to the dispensing body. It would have been obvious to one of ordinary skill in the applicator/dispersing art, at the time the invention was made, to secure the cap or removable protective sheath to the apparatus of both Lobdell and Pearce by a snap ring retention mechanism in view of the teachings of Poole et al. in order to seal the closure and be flexibly coupled to the dispensing body. With respect to claim 2, Pearce also discloses that the spreader surface 18 has the form of a blade or spatula (note Fig. 1) on the nozzle cap attached to the dispenser container 10 and located proximate the nozzle exit or opening (note Fig. 3). With respect to claim 3, Pearce further discloses that the spreader surface 18 is characterized by being disposed proximate the nozzle 13 (note Fig. 3), at the nozzle 13 (note Fig. 3), carried by the nozzle 13 (note Fig. 3), and by being curved (note Fig. 3). With regard to claim 4, Pearce additionally discloses that the spreader surface 18 has the form of a flap or blade (note Fig. 1 and line 57 in col. 1) located at the nozzle exit or opening (note Fig. 3) from which the material is dispensed, the flap or blade being stiff (note line 57 in col. 1). With regard to claim 5, Pearce also discloses that the dispenser container 10 carries the nozzle 13 (note Figs. 1-3) and that the dispenser container 10 contains edible material (note lines 21-23 in col. 1). With regard to claim 15, Pearce further discloses that the spreader surface 18 is angled so as not to engage the material as

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it is dispensed through the nozzle 13 (note lines 6-10 in col. 2). With regard to claim 16, Pearce additionally discloses that the spreader surface 18 is angled relative to the nozzle 13 so that the terminal edge (constituted by points 19) can engage the material while the nozzle 13 remains spaced above the level of the material (note lines 10-13 in col. 2). With respect to claim 17, Pearce also discloses that the spreader surface 18 tapers toward a flexible tip (note Figs. 2 and 3) with the spreader surface 18 being of sufficient thickness (note Fig. 3) so as to be manipulable without flexing (note lines 10-14 in col. 2). With respect to claim 18, Pearce further discloses the method of spreading the dispensed material (note lines 3-14 in col. 2). With respect to claim 20, Poole et al. further teach the obviousness of using a cap or lid portion that has an interior configuration to conform to the nozzle and nozzle outlet or opening and to the spreader surface (note Fig. 19) to completely cover the dispensing device or apparatus. With respect to claim 21, Pearce additionally discloses that the spreader surface 18 has a curvature to conform to an edible curved surface (note Figs. 2 and 3).

36. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pearce in view of Lobdell and Poole et al., as applied to claims 1-5, 15-18, 20 and 21 above, and further in view of Manadanas et al. Pearce discloses that the dispenser applicator can be used to apply icing to cakes (note lines 21-23 in col. 1). Although Pearce fails to disclose that the nozzle 13 has a serrated edge at the nozzle outlet or opening 17, attention is directed to Manadanas et al. who disclose another dispenser for viscous materials having a nozzle 44 (note Figs. 5 and 5A) whose outlet 46 has serrated edges 48 (note lines 17-20 in col. 6) in order to shape the material being dispensed (note lines 55-56 in col. 2). It would have been obvious to one of ordinary skill in the applicator/dispensing art, at the time the invention was made, to form the outlet of the nozzle of Pearce with serrated edges in view of the teachings of Manadanas et al. in order to shape the material being dispensed to have a certain configuration for decorative purposes especially when applying icing to cakes. With respect to claim 12, Pearce further discloses that the spreader surface 18 overlies at least part of the nozzle outlet or opening edge (note Fig. 3).

Response to Arguments

37. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

38. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

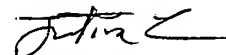
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

39. Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner, Kathleen J. Prunner, whose telephone number is 571-272-4894.

40. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu, can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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41. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

11/11/05



Kathleen J. Prunner

October 28, 2005